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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|------------------------|---------------------|------------------|
| 10/827,300 | 04/20/2004 | Christopher M. Osborne | 052833-5014-01 | 2555 |
| 9629 | 7590 | 11/01/2004 | EXAMINER | |
| MORGAN LEWIS & BOCKIUS LLP 1111 PENNSYLVANIA AVENUE NW WASHINGTON, DC 20004 | | | KOVACS, ARPAD F | |
| | | | ART UNIT | PAPER NUMBER |
| | | | 3671 | |

DATE MAILED: 11/01/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/827,300

Applicant(s)

OSBORNE ET AL. 

Examiner

Árpád Fábián Kovács

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3671

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 April 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-13 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,2,4-9,11 and 13 is/are rejected.
- 7) ☒ Claim(s) 3,10 and 12 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 4/20/2004.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 4-9, 11 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 4 and dependent claims thereof are unclear & indefinite, because elements recited, for example: "the plurality of shutters, the pivot, the roof, the support" all found to have antecedent basis in claim 3, and not in claim 2. For examination purposes these claims treated as if they were dependent from claim 3.

Claim 11, the recitation of "the plurality of shutters" is indefinite & unclear if for antecedent basis it should depend from claim 3 or claim 10 (as recited). For examination purposes it is construed that "the plurality" means "the first, the second and the third shutters" as recited in claim 10.

Claim Objections

3. Claim 7 objected to because of the following informalities: on ln 3, between "shutter is" & "the collapsed" it appears that a – in – word is missing. Appropriate correction is required.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

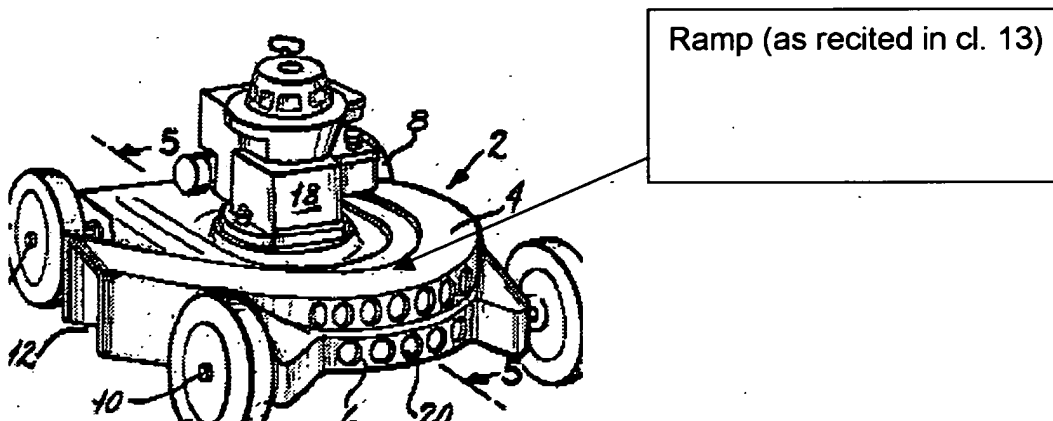
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A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1, 13 are rejected under 35 U.S.C. 102(b) as being anticipated by De Lay (3531923).

De Lay recites the claimed invention, including the a cover movably mounted within the housing in a plane parallel to the cutting plane for obstructing the discharge opening in mulching mode & not obstructing during mowing mode (ref. 12, opening; ref 26, cover; ref 28, considered a fin or rib, as the word “fin” defined in the Webster dictionary; see also col. 2, ln 28-59).

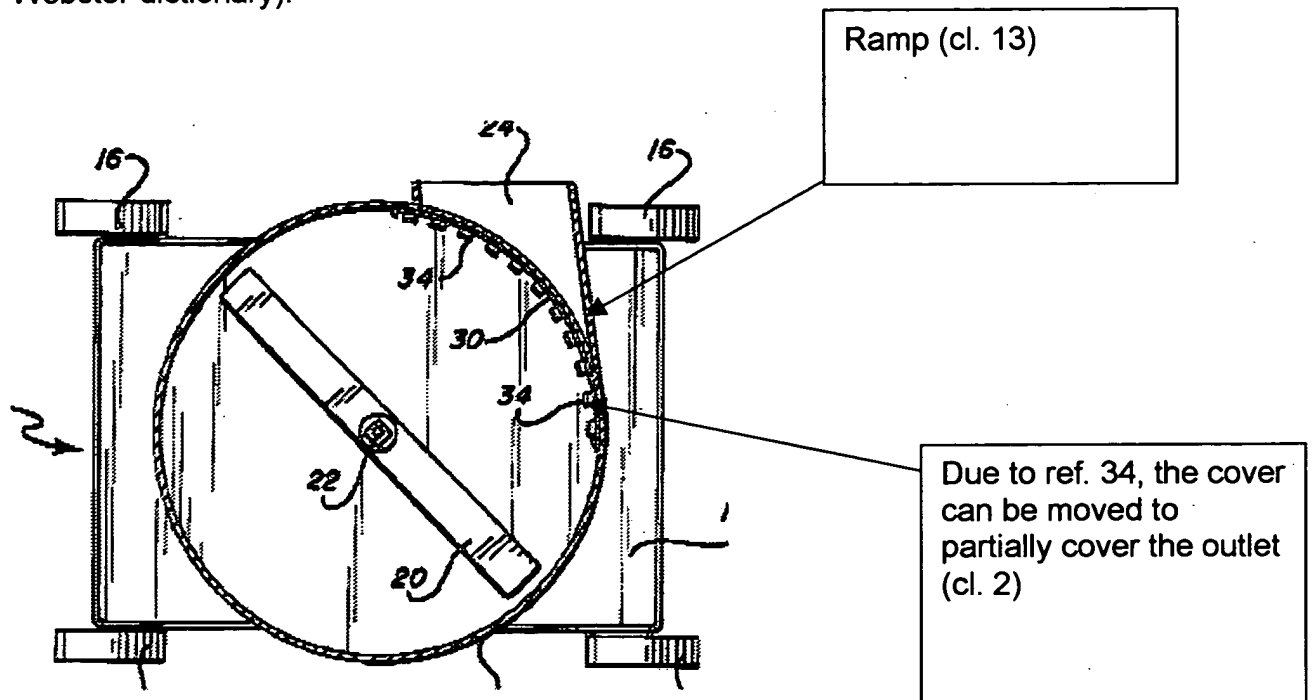


Claims 1, 2, 13 are rejected under 35 U.S.C. 102(b) as being anticipated by Paker (4189904).

Paker (similarly to De Lay) recites the claimed invention, including the a cover movably mounted within the housing in a plane parallel to the cutting plane for obstructing the discharge opening in mulching mode & not obstructing during mowing mode (ref. 24,

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opening; ref 30, cover; ref 34, considered a fin or rib, as the word "fin" defined in the Webster dictionary).



Allowable Subject Matter

6. Claims 3, 10, 12 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

7. Claims 4-9, 11 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

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Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Árpád Fábián Kovács whose telephone number is 703-308-5897. The examiner can normally be reached on Mo-Th.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas B. Will can be reached on 703 308 3870. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Árpád Fábián Kovács
Primary Examiner
Art Unit 3671

ÁFK